Supreme Court, U.S.
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No. 07-426

In the
Supreme Court of the United States

RICHARD HAMBLEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Whether the Second Amendment Guarantees Members Of A Legitimate State Authorized Militia To Keep and Bear Arms Supplied By Themselves Of The Kind In Common Use By The Military At The Time.

II. PARTIES TO THE PROCEEDING

The Petitioner, Richard Hamblem, was the Defendant/Appellant below.

Respondent, United States of America was the Plaintiff/Appellee in the Court of Appeals.

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III. OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reproduced in the appendix hereto.

IV. JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Sixth Circuit was entered on June 21, 2007. This petition for writ of certiorari is filed within ninety (90) days of that judgment. This Court's jurisdiction is invoked under 28 U. S. C. § 1254 (1)

V. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

The Militia Clauses of the Constitution, art. I, § 8, cls. 15-16, empower Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions" and "[t]o provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service or the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

18 U. S. C. § 922 (o) states:

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

VI. STATEMENT OF THE CASE

Richard Hamblen graduated from Vanderbilt University, Summa Cum Laude, majoring in Greek and Latin in 1977. While at Vanderbilt, Mr. Hamblen was a member of the Army ROTC. Mr. Hamblen comes from a long line of descendants who actively served in the armed forces of the United States and State of Tennessee. Mr. Hamblen himself served eight (8) years in the United States Army obtaining the rank of First Lieutenant before being honorably discharged in 1984. After leaving United States service, Mr. Hamblen was commissioned as an officer in 1999 in the Tennessee State Guard.

The Tennessee State Guard is an all volunteer force created and authorized by Tennessee State Law within the Tennessee Department of the Military. T.C.A. § 58-1-104, 58-1-410. Pursuant to its statutory authority, the Tennessee

State Guard is authorized to act as an armed force. Id. There were approximately eleven hundred (1,100) members of the Tennessee State Guard in 2001. All members of the State Guard are responsible for purchasing their own uniforms and other equipment.

The State of Tennessee maintains twenty-one (21) M16A1 rifles, defined by federal law as machine guns for use by the Tennessee State Guard. Members of the State Guard receive annual training which includes weapons familiarization and includes live fire exercises with these M16A1s.

At the annual live fire training exercise, a civilian employee of the Tennessee Department of the Military signed for and received the M16A1s from the Tennessee National Guard Armory in Smyrna, Tennessee and then provided the weapons to Tennessee State Guardsmen who were responsible for supplying their own ammunition and magazines, cleaning and servicing the weapons, conducting the live fire exercises and securing the weapons during the training.

Throughout its history, the Tennessee State Guard has been used on occasion to perform official state duties. The Guard has on occasion performed those functions in an armed capacity.

Immediately after September 11, 2001, the Tennessee State Guard was utilized to perform security functions at the United States Naval Air Station in Millington, Tennessee. In the months following September 11, there was discussion regarding further use of the Tennessee State Guard with respect to security functions relating to preparation for possible chemical and biological attacks.

In September 2001, Mr. Hamblen held the rank of Captain in the Tennessee State Guard. Mr. Hamblen was in command of the 201st Military Police Battalion. Based upon his years of experience and training in the U.S. Army, and given his understanding of the role the State Guard might be called upon to fulfill, Mr. Hamblen never questioned that there was the possibility that the Guard would be utilized in its statutorily authorized capacity as an armed force. Similarly, based upon his experience and training and years of service with the Tennessee State Guard, he recognized that the Guard was woefully unprepared to fulfill its duty if called upon to act as an armed force. Specifically, the State of Tennessee was not adequately prepared to arm the Guard should it be called upon to act in such a capacity.

In light of his understanding of the situation, the potential for being called to act in such fashion and his duty to the State of Tennessee, as well as his duty to the men and women he commanded, Mr. Hamblen used materials legally obtained on the open market necessary to rebuild demilitarized weapons which have been or are currently used by the Armed Forces of the United States and its NATO allies.

Mr. Hamblen eventually realized that the Tennessee State Guard would not be utilized in its full constitutional and statutorily authorized capacity as an armed force. By this time, Mr. Hamblen already had the weapons in question. The weapons were stored along with other military weapons and equipment at Mr. Hamblen's place of business located on Houston Street in Nashville, Tennessee. The weapons were kept locked in a concrete safe with a steel door secured by a steel deadbolt lock.

In light of the fact that there was a decreasing likelihood of the Tennessee State Guard being used in its authorized

Constitutional role, Mr. Hamblen set about to find a way to dispose of the weapons in a manner consistent with federal law. Mr. Hamblen first obtained a Federal Firearms License (FFL) and subsequently obtained a Special Occupational Tax Stamp which would allow him to register and transfer the weapons in question in accordance with federal law. To obtain a Federal Firearms License an individual must complete a vetting process which includes extensive background and criminal history checks. Once an individual obtains a F. F. L., which is the most rigorous application process, he can then simply pay a tax to the Treasury to purchase the Special Occupational Tax stamps necessary to manufacture, register and sell weapons of the type Mr. Hamblen had.

In March 2004, Mr. Hamblen obtained his F. F. L after being subjected to the extensive background investigation. After agents from the FBI and ATF initially contacted him he completed the application, paid the tax and subsequently received the Special Occupational Tax Stamp for 2004, 2005, and received a renewal notice for 2006.

On April 22, 2004, agents with the FBI and Bureau of Alcohol, Tobacco, Firearms and Explosives went to Mr. Hamblen's place of business on Houston Street in Nashville, Tennessee. The Agents were investigating an alleged tip from an informant that Mr. Hamblen might be in possession of automatic weapons. The agents did not have a search warrant.

Mr. Hamblen greeted the agents and was very cooperative in his interview with them. Mr. Hamblen was asked if he had any automatic weapons in possession and he initially stated that he did not. Mr. Hamblen was asked if he would consent to a search of his premises to which he agreed. He was again asked if he had any automatic weapons in his possession at

which time he acknowledged that he did in fact have such weapons and directed the agents to the safe described above.

Inside the safe Mr. Hamblen directed the agents to nine (9) items in various operational conditions which he stipulated at trial met the statutory definition of a machine gun even though not all were actually functioning weapons. Mr. Hamblen voluntarily forfeited the weapons and assisted the agents in loading the firearms in their vehicle.

On December 14, 2005, a year and a half later Mr. Hamblen was charged in a two (2) count indictment. The case proceeded to trial and on May 31, 2006, the jury returned a verdict of guilty on both counts. Mr. Hamblen was subsequently sentenced to a term of imprisonment of fifteen (15) months on each count to run concurrently followed by a two (2) year period of supervised release, which he is currently serving.

On June 21, 2007, the United States Court of Appeals for the Sixth Circuit affirmed Mr. Hamblen's conviction. The Sixth Circuit held that the Second Amendment creates a collective rather than an individual right to keep and bear arms and that no facts supported Mr. Hamblen's position that his possession of machine guns was authorized by his membership in the Tennessee State Guard.

VII. REASONS FOR GRANTING THE WRIT OF CERTIORARI

Whether the Second Amendment Guarantees Members Of A Legitimate State Authorized Militia To Keep and Bear Arms Supplied By Themselves Of The Kind In Common Use By The Military At The Time.

This Court has not addressed the parameters of the Second Amendment to the United States Constitution with respect to an individual's right to keep and bear arms in connection with his membership in a well regulated Militia since the 1939 decision in United States v. Miller, 307 U. S. 174, 59 S. Ct. 816, 83 L. Ed 2d 1206 (1939). Mr. Hamblen submits that it is no understatement to say that this case is the most significant Second Amendment case since United States v. Miller.

The Sixth Circuit's ruling that the Second Amendment guarantees only a collective right to bear arms and that an individual such as Mr. Hamblen a duly enrolled member of a lawful statutorily authorized militia does not have the right to keep and bear arms for his use in the Militia is not only contrary to the plain language of the Second Amendment but renders the amendment absolutely meaningless. At a time when our country faces growing threats internationally and domestically the right of our citizens to arm and protect themselves to respond to these threats both individually and collectively is important and deserving of review by this Court.

This Court should grant certiorari for four reasons: first, there is a split of authority at the Circuit Court level as to the nature of the right guaranteed by the Second Amendment;

second, the decision of the Sixth Circuit Court of Appeals is in conflict with this Court's decision in United States v. Miller; third, the Court must determine whether the United States Government may prohibit members of a lawful, state authorized Militia from possessing weapons supplied by themselves of the kind in common use by the armed forces at the time; and finally, these proceedings involve questions of exceptional importance regarding the meaning, scope and application of the Second Amendment.

This case represents the best opportunity for the Court to address the parameters of the Second Amendment with respect to the nature of the right guaranteed by that Amendment. Not only does this case squarely present an opportunity for the Court to resolve the conflict regarding whether the Second Amendment creates a collective or individual right but goes a step further by focusing that inquiry in the context of the Petitioner's membership in a legitimate statutorily created and recognized Militia.

A. There is a spilt of authority at the Circuit Court level as to the nature of the right guaranteed by the Second Amendment.

In the opinion below, the Sixth Circuit Court of Appeals reaffirmed its ruling in United States v. Warin, joining the majority of Circuit courts holding that the Second amendment guarantees a collective rather than an individual right. 530 F. 2d 103, 106 (6th Cir. 1976). The Fifth Circuit and now the D. C. Circuit have interpreted the second amendment to guarantee an individual right. United States v. Emerson, 270 F. 3d 203 (5th Cir 2001); Parker v. District of Columbia, 478 F. 3d 370 (D. C. Cir. 2007). The court should grant Certiorari in this case in order to resolve this issue of great constitutional importance.

Under any conceivable interpretation of the Second Amendment, the collective rights view is wrong because some individuals among "the people" must in fact personally and physically "keep and bear arms." If those individuals do not include at least the actual members of "a well-regulated militia" within a state, then the Second Amendment is meaningless, and if meaningless is without effect. However, "[i]t cannot be presumed" – let alone held – "that any clause of the constitution is intended to be without effect." Marbury v. Madison, 5 U. S. 1(Cranch), 137, 174 (1803).

It is impossible to imagine a "collective" right for a militia as a disembodied institution to "keep and bear arms" that does not entail an "individual" right for each member of that militia to do so in his own hands. The right, after all is exercised only through the actual "keep[ing] and bear[ing] arms, " which can be done only by a human actor.

Considering the original intent and the language of the drafters of the Constitution, it is clear that the Bill of Rights, with the exception only of the Tenth Amendment was intended to protect personal liberty. Consideration of the text, historical background and writings contemporaneous to its adoption, it is clear that the drafters and ratifiers of the Bill of Rights intended the Second Amendment to guarantee an individual right. This case provides the court the vehicle and opportunity to resolve this issue about which the lower courts are conflicted.

B. The Decision of the Sixth Circuit Court of Appeals is in Conflict with the Supreme Court's decision in United States v. Miller.

The single most significant aspect of this case is that the Defendant, Mr. Hamblen was a member of a legitimate, statutorily authorized Militia; the Tennessee State Guard. While individuals have previously attempted to justify firearm possession based upon membership in some ad hoc private militia or sedentary militia, this appears to be a case of first impression regarding enrolled membership in a legitimate, statutorily authorized militia.

Since their settlement, the American colonies endured the threat of attack by numerous enemies. The colonists shared their ancestors' fear and distrust of a standing army in peacetime and unwilling to maintain such adopted the time honored militia system which dates back to the English Assice of Arms in 1181. In the absence of a police force or standing army in peace time, every free Englishman was both permitted and required to keep such arms as he could afford both for law enforcement and military service; as well as for personal protection. C. Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales 7* (1972); C. Hollister, *Anglo-Saxon Military Institutions,* Chap. 2 (1962). With slight variations, the different colonies and in turn the independent states required virtually every able bodied free white man between the age of majority and a designated cut off age to keep arms and muster occasionally for drill. In 1792, The Congress,(including many of the same men who drafted and adopted the Second Amendment) meeting following the enactment of the Second Amendment, defined the Militia to include the entire able bodied military age male citizenry of the United States and required each of them to own supply his own firearm. First

Militia Act, 1 Stat. 271 (1792); See e. g., Hampton and Company v. U. S., 276 U. S. 394, 412 (1928), and cases cited therein. Thus, those arms owned personally by an individual were the arms of the Militia.

The Constitution empowers the Federal Government to call forth the militia "to execute the Laws of the Union, suppress Insurrections and repel Invasions." Article I, Section 8, Clause 15. The Militias are the only constitutional establishments to which the constitution explicitly assigns those duties. Therefore, maintenance of the militia and complete compliance with constitutional principles is mandatory. One of those constitutional principles is that members of the militia must be suitably armed. Therefore, since the Constitution cannot be internally self-contradictory, Congress can have no power to disarm the States' Militia directly or to achieve the same result indirectly by preventing their members from arming themselves if the State's neglect to do so. The conclusion is inescapable that Congress is absolutely prohibited from enacting any law that prohibits an enrolled member of a state Militia, otherwise acting lawfully, from actually possessing the types of firearms suitable for Militia use that are involved here, whether he obtains those firearms directly from the State or, based on the State's dereliction of duty, is compelled to supply them himself.

United States v. Miller, discussed the Second Amendment in the context of the militia. No one participated in the proceedings on the behalf of Mr. Miller. It is therefore unclear what Miller's status was vis á vis the Militia. However, the Court reasonably interpreted the term "militia" as it existed at the drafting of the Constitution and the first Militia Acts. Nonetheless, lower Courts have attempted over time to narrow the definition of what constitutes a militia by refusing to recognize membership in private militias or

sedentary militias as worthy of consideration. See e. g. United States v. Warin, *supra*; United States v. Oakes, 564 F. 2d 384, 387 (10th Cir. 1977); United States v. Bournes, 339 F. 3d 396 (6th Cir. 2003).

The decision below by the Sixth Circuit is inconsistent with the original intent of the Framers, historical understanding of the rights and obligations of Militia men and contrary to this Court's opinion in Miller. Having no choice but to recognize the lawfulness and legitimacy of the Tennessee State Guard and of Mr. Hamblen's membership in it, the court nonetheless determined that his firearm possession was not protected by the Second Amendment. Mr. Hamblen submits there is simply no way to reconcile this decision with the Second Amendment and this Court's ruling in Miller; and if this decision is allowed to stand whereby an individual can be a member of a Militia but not possess and maintain personal weapons of a type related to that Militia service the Second Amendment is in fact a dead letter. In other words, if someone like Mr. Hamblen, who is a member of a legitimate statutorily created and authorized Militia, does not have the right to keep and maintain weapons of a military character which would be related to service in that Militia, then no one has the right, rendering the amendment meaningless.

There can be no question that Miller applies in its fullest force in this case. Although there was no evidence that the individual Defendants in Miller were enrolled members of any actual state Militia, the Court treated the Second Amendment as applicable and the Government raised no objection. The only question addressed in Miller was whether a particular weapon, a shotgun, was a suitable firearm for a Militia, a question the Court could not answer because there was no evidence in the record on that matter. Here, there is no

question that Hamblen was an enrolled member of Tennessee's Militia and the firearms at issue in this case are precisely of the types used everywhere throughout the world by light infantry forces.

If the Sixth Circuit's decision were correct, then Miller should have held that the Defendants there had no Second Amendment defense at all as a matter of law; not that the validity of their defense depended on a disputed question of fact relating to the type and use of the firearm at issue. Conversely, if Miller is correct, then the validity of Mr. Hamblen's defense likewise, must turn on whether the firearms he possessed were, or could be "part of the ordinary military equipment" that "could contribute to, defense," which no one can deny. Thus, the Sixth Circuit's decision can be correct only if Miller is incorrect; a decision only the Supreme Court can make.

C. The Court Must Determine Whether The United States May Prohibit Members Of A Lawful, State Authorized Militia From Possessing Weapons Supplied By Themselves Of The Kind In Common Use By The Armed Forces At The Time.

Though Miller offered little in the way of resolution in the many years since it was decided, one portion of the opinion is absolutely clear and not debatable:

> . . . these show plainly enough that the militia comprised all males physically capable of acting in concert for the common defense. . . [a]nd further, that ordinarily when called for service these men were

> expected to appear bearing arms supplied by themselves and of the kind in common use at the time.

307 U. S. at 179.

The opinion below cites Miller for the proposition that weapons possession is protected under the Second Amendment if it "has some reasonable relationship to the preservation or efficiency of a well regulated militia." But, the lower court goes on to hold that Mr. Hamblen cannot make such a showing because: (1) If necessary the state would arm and equip its Militia and; (2) there was no order from the state requiring him to possess and maintain such weapons. Mr. Hamblen submits that these arguments miss the point. Miller implicitly recognizes that the personal possession of firearms by an individual presumed to be a member of a Militia preserves the efficiency thereof under modern conditions. Given the growth of the modern military establishment unimaginable and perhaps unwanted by the Founders; the contemporary view of the Militia is that it is a resource only for times of dire necessity such as keeping order when the Armed Forces and federalized National Guard have been committed elsewhere or in the aftermath of some catastrophic attack or natural disaster. This was the very motivation for Mr. Hamblen obtaining the firearms in the first place.

Given that the very circumstances which would require the calling up of the Militia today would probably prevent them from drawing weapons from centralized armories; their personal possession of weapons facilitates Militia service today no less than at the time of the adoption of the Bill of Rights. The Sixth Circuit's optimistic assessment of the State's ability to arm the Militia under such circumstances defies both logic and experience. Given the well-documented

difficulties the United States Army had arming and protecting troops in Iraq it is incredible to believe that the State of Tennessee would be able to arm and equip the Tennessee State Guard given the chaotic circumstances which would lead to such a situation. This is true especially since, according to the testimony of the commanding General of the Tennessee State Guard, no contingency plan for doing so exists and at a time of relative calm, the State possesses only 21 M16A1s for the entire Tennessee State Guard and no ammunition or accessories.

D. These Proceedings Involve Questions Of Exceptional Importance Regarding The Meaning, Scope And Application Of The Second Amendment.

Sovereignty ultimately resides in the people who delegate certain enumerated powers to the governments they establish. All powers not delegated to federal or state governments through their respective Constitutions are retained by the People. One such power reserved to the People through the Second Amendment of the Bill of Rights is the right to keep and bear arms in order to provide themselves with the means necessary to form themselves into militias to maintain the security of a free state. This right pre dates the Constitution, and is recognized by the Constitution as an intregal mechanism for maintaining the Constitution's very existence by granting the federal government the power to call the militia into Federal Service in order to ensure that the laws are faithfully executed, suppress insurrection and repel invasion.

The Militia has been recognized by law throughout the history of this country. Perpich v. Department of Defense, 496 U. S. 334, 110 S. Ct. 2418, 110 L. Ed 2d 312 (1990).

Organizations such as the Tennessee State Guard, of which Mr. Hamblen was a member, are recognized as the militia of the Constitution and current law. As Miller states, the Second Amendment was ratified with the purpose of maintaining the efficiency of the militia, and thus the security of a Free State. Any law or act of government, which impairs the efficiency of the militia by infringing upon its right to acquire and maintain weaponry of the type in common use at the time, is contrary to these well-established principals.

In these times when our elected officials are continually warning the People of the United States to be especially vigilant in the face of threats presented by foreign enemies and their domestic allies it would seem foolhardy to deprive the people in this country of the means to utilize the time honored and constitutionally sanctioned methods of maintaining the very freedoms and existence guaranteed by the Bill of Rights. The Second Amendment guarantees the right of the people to keep and bear arms as well as the continued existence and utility of the militia, stated by the Constitution as so "necessary for the security of a Free State."

Each of these arguments point out the deficiencies in the reasoning of the Court of Appeals. Further, the lower court fails to recognize the distinction between that which is a right and that which is required. The fact that the State of Tennessee or the Tennessee State Guard leadership did not require members to obtain or possess personal weapons in no way undermines the legitimacy of members doing so on their own. These facts were all recognized by this Court in Miller as a constitutionally guaranteed given. The only true question is whether the arms at issue were " . . . any part of the ordinary military equipment or that its use could contribute to the common defense." There is undisputed trial testimony that

Mr. Hamblen's weapons were of the type expected to be used and in fact trained with by members of the State Guard. Further, it is undisputed that these weapons are part of the ordinary military equipment and of the type used by the modern armed forces.

In sum, the holding of the United States Court of Appeals for the Sixth Circuit is that even if an individual is a member of a legitimate statutorily authorized Militia and the firearms at issue are part of the ordinary military equipment or could contribute to the common defense, that individual is nonetheless not protected by the Second Amendment in possessing such weapons. If the Second Amendment does not protect an individual's possession of such firearms under these circumstances, then it offers no protection whatsoever and is meaningless. Such a decision is inconsistent with historical principles, the original intent of the Constitutional Framers and the recognized authority of this Court in United States vs. Miller. This Court should grant Certiorari in order to clarify the nature of the right guaranteed by the Second Amendment, establish the parameters for applying that right and upholding the legal and historical precedent of this court and the Constitution.

VIII. CONCLUSION

For the foregoing reasons the Petitioner prays that a Writ of Certiorari issue to review the decision of the Sixth Circuit and vacate the decision below and order the case remanded.

Respectfully Submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 06-6170

[Filed June 21, 2007]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
v.)
)
RICHARD HAMBLEN,)
Defendant-Appellant.)
)

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

JUDGES: BEFORE: GIBBONS and COOK, Circuit Judges; and CLELAND, District Judge.*

* The Honorable Robert H. Cleland, United States District Judge for the Eastern District of Michigan, sitting by designation.

OPINION

CLELAND, District Judge. Defendant-Appellant Richard Hamblen appeals his conviction for possessing machineguns[1] in violation of 18 U.S.C. § 922(o) and 26 U.S.C. § 5861(d). He contends that these statutes are unconstitutional as applied to him because they (1) violate his Second Amendment right to keep and bear arms as a member of the Tennessee State Guard ("State Guard"), which, he says, constitutes a "well-regulated militia," and (2) are unconstitutionally vague as applied to him. For the reasons stated below, we reject both arguments and affirm.

I.

Defendant-Appellant Richard Hamblen enlisted in the Tennessee State Guard in 1999. The all-volunteer State Guard is one of four organizations within the Tennessee Department of the Military[2] and is authorized by Tennessee statute. In its current incarnation, the State Guard has existed since the 1980s and has an annual budget of approximately $50,000. The State Guard's mission is to augment the Tennessee National Guard, and it typically performs ceremonial duties. State Guard training emphasizes responding to natural or man-made disasters.

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[1] The term "machinegun" will be used to denote weapons that fit within the statutory definition of "machinegun" set forth at 26 U.S.C. § 5845(b) for purposes of 18 U.S.C. § 922(o). The parties have stipulated that each of the nine weapons Hamblen was convicted of possessing constitutes a machinegun.

[2] The other three organizations are the Army National Guard, the Air National Guard and the Tennessee Emergency Management Agency.

Under Tennessee statute, the State Guard is authorized to become an armed force if the State Guard is activated by the Governor of Tennessee. The State Guard has not recently been "activated,"[3] although it has been called into service.[4] The State Guard is to serve as an armed force only as a last resort. If "activated," the governor of Tennessee is authorized to obtain weapons needed to equip the State Guard. Tenn. Code Ann. § 58-1-405.

As volunteers in an honored traditional form of service to the State of Tennessee, all State Guard members are responsible for purchasing their own uniforms and other equipment. State Guard members are not issued weapons. The Guard is, however, provided with twenty-one M16 rifles and ammunition for use during a three-day annual training session conducted by a State Guard commander. These M16s, capable by design of being operated in a fully automatic mode, have been disabled such that they do not function in that mode and the user must pull the trigger once for each shot fired. State Guard policy prohibits members from either keeping State Guard weapons in their possession for possible emergency or other use or carrying their own individual weapons in the course of their duty. If a State Guard member were to carry a personal weapon while serving in his official State Guard capacity he would be subject to a court-martial.

According to Hamblen's trial testimony, he believed that the State Guard could be activated and used as an armed force

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[3] In a prior incarnation, the State Guard was used on occasion to perform its duties in an armed capacity.

[4] After September 11, 2001, the State Guard was utilized to perform unarmed security functions at the United States Naval Air Base in Millington, Tennessee.

after September 11, 2001. Because the State Guard had only a few weapons and over a thousand members, Hamblen claimed to have concluded that the State Guard did not have the resources to perform its duties as an armed force and began looking for a means to better equip the State Guard. Hamblen was aware that State Guard members were specifically instructed after September 11, 2001 not to carry weapons in connection with their duties. Hamblen purchased parts kits with his own funds and used his metalworking expertise to build the machineguns himself. He built a walk-in safe at his place of business to store the machineguns and added security to the building. On at least one occasion, Hamblen had his unit train with his 1919 A4 machinegun. At the time, Hamblen knew that this training exercise violated State Guard policy.[5]

Hamblen never discussed his machinegun possession with his superiors at the State Guard, and no law enforcement officer or State Guard superior knew of Hamblen's machinegun possession. Hamblen admitted that no one at the State Guard ever ordered or even authorized him to obtain any weapons for the State Guard. Hamblen also admitted that he knew at the time that his possession of the machineguns violated the statutes under which he was convicted. Hamblen testified that he believed he was authorized to possess the machineguns because the Constitution provides an exception to gun control laws and gives people the right to possess militarily useful weapons for an armed force like the State Guard.[6]

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[5] Lower-ranking officials such as Hamblen are not authorized by the State Guard to conduct any firearms training.

[6] While Hamblen initially testified that the Statue Guard is required to be an armed force, Hamblen later admitted that the Tennessee

In March 2004, Hamlen took steps to make his possession of the machineguns legal by obtaining a "Type 1" federal firearms license, which permitted him to sell pistols, revolvers, shotguns and rifles. Hamblen, however, had not paid a special occupation tax that would enable him to deal in National Firearms Act weapons, such as machineguns. Furthermore, the parties stipulated that none of the nine machineguns were ever registered to Hamblen in the National Firearms Registration and Transfer Record.

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") began an investigation in early 2004 after receiving information that Hamblen was illegally possessing machineguns. On April 22, 2004, Eric Kehn, an ATF agent, and Greg Franklin, an FBI agent, spoke with Hamblen at his place of business. The agents asked Hamblen whether he possessed any automatic weapons, and he denied such possession. Hamblen admitted at trial that he denied possessing any automatic weapons because he "had something to hide" and "panicked." Hamblen consented to a search of the premises. After the agents again asked Hamblen whether he possessed automatic weapons, Hamblen admitted that he possessed some and directed the agents to a walk-in safe at the back of the building. The safe contained nine machineguns: (1) three Model 1919 A6 machineguns; (2) four Model G3 machineguns and (3) two Model MG-42 machineguns. Hamblen told the agents that he had made the machineguns himself from parts kits that he had purchased. At trial, the agents testified that when they asked Hamblen why he assembled and kept these machineguns, Hamblen explained that he was a World War II re-enactor and a collector, and he

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Code authorizes, not requires, the State Guard to be an armed force.

did not mention either the Second Amendment or the Tennessee State Guard. While Hamblen admitted at trial that he told the agents he was a World War II re-enactor and collector, Hamblen contended that he also told them that he was keeping the machineguns in case they were needed by the State Guard in an emergency. Agent Franklin testified that the first time he heard Hamblen's Second Amendment claim was eighteen months later.

On December 14, 2005, Hamblen was charged in a two-count indictment for unlawfully possessing machineguns in violation of 18 U.S.C. § 922(o) and possessing unregistered firearms in violation of 26 U.S.C. § 5861(d). The case proceeded to trial and, on May 31, 2006, the jury returned a verdict of guilty on both counts of the indictment. After return of the verdict, the district court denied Hamblen's motion for judgment of acquittal based on the allegedly unconstitutional infringement of Hamblen's Second Amendment rights that would result from the application of 18 U.S.C. § 922(o). At Hamblen's August 25, 2006 sentencing hearing, the district court sentenced Hamblen to a term of imprisonment of fifteen months for each count, to run concurrently, followed by a two-year period of supervised release. Hamblen filed a timely notice of appeal.

II.

This court reviews a district court's ruling on the constitutionality of a federal statute *de novo*. *United States v. Faasse*, 265 F.3d 475, 480 (6th Cir. 2001) (citing *United States v. Napier*, 233 F.3d 394, 397 (6th Cir. 2000)). "In reviewing the denial of a motion for acquittal, 'the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond

a reasonable doubt.'" *United States v. Landham*, 251 F.3d 1072, 1083 (6th Cir. 2001) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

III.

Hamblen appeals his conviction for unlawfully possessing machineguns under 18 U.S.C. § 922(o), claiming that this statute is unconstitutional as applied to him because it violates his Second Amendment right to keep and bear arms. The Second Amendment of the United States Constitution states that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Hamblen contends that he can establish a valid Second Amendment defense because he satisfies the following four-part test established by the Tenth Circuit:

> As a threshold matter, [a defendant making a Second Amendment claim] must show that (1) he is part of a state militia; (2) the militia, and his participation therein, is "well regulated" by the state; (3) machineguns are used by that militia; and (4) his possession of the machinegun was reasonably connected to his militia service.

United States v. Haney, 264 F.3d 1161, 1165 (10th Cir. 2001). Hamblen claims that he is a part of the Tennessee State Guard, a well-regulated militia, and that the machineguns he possessed were both of the type used by the State Guard and reasonably connected to his service in the State Guard. Accordingly, Hamblen submits that 18 U.S.C. § 922(o) is unconstitutional as applied to him because it violates his Second Amendment right to keep and bear arms.

Although the Sixth Circuit has not expressly adopted the *Haney* four-part test, this circuit has held that "the Second Amendment guarantees a collective rather than an individual right." *United States v. Warin,* 530 F.2d 103, 106 (6th Cir. 1976). Additionally, the Supreme Court has stated that a valid Second Amendment claim requires a defendant to establish that his possession or use of a weapon "has some reasonable relationship to the preservation or efficiency of a well regulated militia." *United States v. Miller,* 307 U.S. 174, 178, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939). Thus, at a minimum, Hamblen must assert a collective right by satisfying *Miller.*[7]

Hamblen contends that his possession was reasonably related to his State Guard service because the State Guard could have been activated after September 11, 2001 and Hamblen's machineguns were necessary in light of the State Guard's limited equipment and resources.[8] In his brief, Hamblen also argues that even though he was never ordered

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[7] Because it is clear that Hamblen cannot show that his machinegun possession has some reasonable relationship to the preservation or efficiency of the State Guard, we need not accept or reject the Tenth Circuit's test and refrain from deciding whether the State Guard is a well regulated militia under the Second Amendment.

[8] The government submits that it is unlikely that Hamblen's machinegun possession was truly motivated by his State Guard service because he allegedly failed to explain to the agents that the machineguns were for State Guard use and because Hamblen failed to inform any State Guard superior of his machinegun possession. For the reasons stated above, even if Hamblen subjectively intended to possess the machineguns for State Guard use, his possession was not reasonably related to the preservation or efficiency of the State Guard.

to obtain weapons for the State Guard, he was somehow authorized to do so by the Second Amendment and *Miller*.

We disagree. As stated above, the Second Amendment protects weapons possession or use only if it "has some reasonable relationship to the preservation or efficiency of a well regulated militia." *Miller,* 307 U.S. at 178. Hamblen has failed to show that his machinegun possession was reasonably related to the State Guard's preservation or efficiency. Hamblen points to the State Guard's meager budget and arms supply to show the need for him to possess machineguns for State Guard use. This argument is unavailing because Tennessee statute both allows for the activation of the State Guard as a military force and also provides the means to arm and equip that force. *See* Tenn. Code Ann. § 58-1-405. It is not reasonable to assume that the governor of Tennessee would use his statutory authority to activate the State Guard without also using his statutory authority to arm and equip the State Guard such that State Guard members would themselves need to acquire firearms, especially machineguns, to preserve the State Guard or its efficiency.

Furthermore, there are no facts to support the position that Hamblen's machinegun possession was authorized by the State Guard. Although Hamblen appears to claim that he was authorized to possess the machineguns by virtue of his State Guard membership alone, State Guard policy prohibited individual members from using their personal weapons in the course of their State Guard duties, and any violations would result in court-martial. Indeed, Hamblen agreed at trial that no one "from the State Guard at any time ever authorize[d him] in any way to possess any of the nine weapons." Hamblen also admitted that, even post-September 11, 2001, State Guard policy prohibited his behavior. Hamblen has thus failed to show how his individual decision to purchase

machineguns based on his own perception of the State Guard's future activation and financial need was reasonably related to the preservation or efficiency of the State Guard, whose own policies prohibited this very behavior.

Accordingly, we affirm the district court's denial of a motion for judgment of acquittal on Hamblen's Second Amendment claim.

IV.

Hamblen next contends that both 18 U.S.C. § 922(o) and 26 U.S.C. § 5861(d) are unconstitutionally vague as applied to him. He claims that 18 U.S.C. § 922(o) is unconstitutionally vague because (1) it provides an exception for machinegun possession that is "under the authority of" the United States or a State, but does not provide sufficient guidance as to what constitutes proper authority and (2) it allows for arbitrary enforcement. Hamblen also argues that 26 U.S.C. § 5861(d) is unconstitutionally vague because (1) it requires registration that would be impossible to obtain and (2) it allows for arbitrary enforcement.

The government objects to these claims because Hamblen did not raise them at the district court level. "This court is not compelled to hear, nor should it hear, an issue not presented to the district court unless reaching that issue serves an overarching purpose beyond that of arriving at the correct result in an individual case." *Foster v. Barilow*, 6 F.3d 405, 408 (6th Cir. 1993). Hamblen asserts that the panel should consider this issue because it affects his substantial rights, addresses a matter of constitutional significance and is a matter of law that does not require further development of the factual record. Because Hamblen's as-applied constitutional vagueness challenge is by its nature a fact-specific individualized claim,

see Maynard v. Cartwright, 486 U.S. 356, 361, 108 S. Ct. 1853, 100 L. Ed. 2d 372 (1988), Hamblen has not shown an over-arching purpose warranting review of his claims that are raised here for the first time.

Even if we were to review this issue on the merits, Hamblen has failed to show that these statutes are unconstitutionally vague as applied to him. Due process requires that a statute give notice of prohibited conduct such that a person of ordinary intelligence can conform his conduct to comply with the law. *Kolender v. Lawson,* 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983). "Vagueness challenges to statutes not threatening First Amendment interests are examined in light of the facts of the case at hand; the statute is judged on an as-applied basis." *Maynard,* 486 U.S. at 361 (citations omitted).

Hamblen contends that 18 U.S.C. § 922(o)(2)(A) is unconstitutionally vague, as applied, because it does not provide sufficient guidance for Hamblen to know if he was authorized to possess machineguns for State Guard use. Hamblen's claim fails for the reasons stated above. Hamblen's machinegun possession was admittedly against State Guard policy, and Hamblen himself testified that the State Guard did not authorize him to possess machineguns for State Guard use. Accordingly, we conclude that, under the facts of this case, a person of ordinary intelligence would have been placed on sufficient notice that Hamblen's conduct was prohibited under 18 U.S.C. § 922(o). Hamblen's claim that the vagueness inherent in 18 U.S.C. § 922(o) encourages arbitrary enforcement must fail for the same reasons.

Hamblen also claims that 26 U.S.C. § 5861(d) is unconstitutional as applied to him because it prohibits possession of an unregistered firearm when it would have

been impossible for Hamblen to register his machineguns due to 18 U.S.C. § 922(o). Hamblen recognizes that this court has previously held that it is not a violation of due process to convict a defendant under § 5861(d) for possessing unregistered machineguns that could not be registered under § 922(o). *See United States v. Bournes*, 339 F.3d 396, 399 (6th Cir. 2003). In *Bournes*, the court held that the defendant could have easily complied with both statutes "by electing not to possess the machine guns at issue in this case." *Id.* Hamblen attempts to distinguish *Bournes* by noting that it also found that the defendant's possession was unlawful under § 922(o), whereas here, Hamblen claims his possession was lawful under the Second Amendment. Since we rejected Hamblen's Second Amendment defense, however, there is no basis to distinguish *Bournes*. Accordingly, Hamblen's impossibility defense fails because, as in *Bournes*, Hamblen could have satisfied both statutes by refraining from possessing machineguns altogether.

Hamblen additionally argues that State Guard members who participated in live fire exercises using State Guard weapons during annual training would technically violate § 5861, which prohibits an individual from possessing a weapon that is not registered to them individually. Hamblen therefore argues that the statute creates the potential for arbitrary enforcement. Although requiring a penal statute to provide minimal guidelines to discourage arbitrary enforcement is "perhaps the most meaningful aspect of the vagueness doctrine," *Smith v. Goguen*, 415 U.S. 566, 574, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974), we need not decide whether § 5861 creates the potential for arbitrary enforcement under that hypothetical. Because Hamblen was not prosecuted for possessing State Guard weapons during annual training, that scenario is simply not before the court and cannot

constitute the basis for an as- applied constitutional vagueness challenge.

V.

For the foregoing reasons, we affirm the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Case Number: 3:05-00226

USM Number 17641-075

[Filed August 25, 2006]

UNITED STATES OF AMERICA)
)
v.)
)
RICHARD HAMBLEN)
)

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

_x_ was found guilty on count(s) One (1) and Two(2) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense
18 U.S.C. § 922(o)	Illegal Possession of Machine Guns

Title & Section	Nature of Offense
26 U.S.C. §§ 5841 and 5861	Possession of Unregistered Firearms

Offense Ended	Count
April 22, 2004	One (1)
April 22, 2004	Two (2)

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

* * *

It is ordered that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 25, 2006
Date of Imposition of Judgment

/s/Todd Campbell
Signature of Judge

Todd J. Campbell, U.S. District Judge
Name and Title of Judge

August 25, 2006
Date

DEFENDANT: RICHARD HAMBLEN
CASE NUMBER: 3:05-00226

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: fifteen (15) months, as follows:

Count One (1): fifteen (15) months, concurrent with Count Two (2).

Count Two (2): fifteen (15) months, concurrent with Count One (1).

x The court makes the following recommendations to the Bureau of Prisons:

1. Incarceration near Nashville, Tennessee, to be close to family, if consistent with the Defendant's security classification.

x The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

x before 2 p.m. on September 25, 2006

* * *

DEFENDANT: RICHARD HAMBLEN
CASE NUMBER: 3:05-00226

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a total term of: Two (2) years as follows:

Count One (1):Two (2) years, concurrent with Count One (1).

Count Two (2): Two (2) years, concurrent with Count Two (2).

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release form the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

_x_ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

_x_ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapons. (Check, if applicable.)

_x_ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

If this judgment imposed a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or

personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

* * *

Judgment - Page 4 of 6

DEFENDANT: RICHARD HAMBLEN
CASE NUMBER: 3:05-00226

SPECIAL CONDITIONS OF SUPERVISION

1. The Defendant is prohibited from owning, carrying or possessing firearms, ammunition, destructive devices or other dangerous weapons.

2. The Defendant shall cooperate in the collection of DNA as directed by the Probation Officer.

* * *

Judgment - Page 5 of 6

DEFENDANT: RICHARD HAMBLEN
CASE NUMBER: 3:05-00226

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached sheet.

	Assessment	Fine	Restitution
TOTALS	$200.00	$0.00	$0.00

* * *

Judgment - Page 6 of 6

DEFENDANT: RICHARD HAMBLEN
CASE NUMBER: 3:05-00226

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

* * *

B x Payment to begin immediately (may be combined with _____ C, ____ D, or _____ F below); or

* * *

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

* * *

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including the cost of prosecution and court costs.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 06-6170

[Filed July 13, 2007]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
v.)
)
RICHARD HAMBLEN,)
Defendant-Appellant.)
)

MANDATE

Pursuant to the court's disposition that was filed 6/21/07 the mandate for this case hereby issues today.

A True Copy

Costs:

Filing Fee. . . . . $
Printing . . . . . $
Total. . . . $

Attest:

/s/ _____
Deputy Clerk

(2)

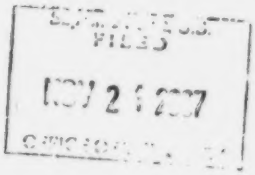
NO. 07-426

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD HAMBLEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

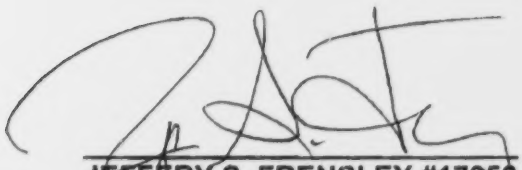


On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION TO PROCEED *IN FORMA PAUPERIS*

Comes, the Petitioner Richard Hamblen, through undersigned counsel, pursuant to Rule 39 of the Rules of the Supreme Court and hereby moves the Court for leave to proceed *in forma pauperis* in this matter. Leave to proceed *in forma pauperis* has not been sought in any other court and counsel was not appointed under the Criminal Justice Act. Mr. Hamblen has recently been released from a fifiteen (15) month term of incarceration as a result of the underlying conviction, which forms the basis of his Petition for Writ of Certiorari, which was denied on October 29, 2007. Mr. Hamblen seeks leave to proceed *in forma pauperis* in light of his recent incarceration in order that he may have his Petition for Rehearing placed on the docket. In support of this Motion, Mr. Hamblen files the attached notarized affidavit in the form prescribed by the Federal Rules of Appellate Procedure, Form 4.

Respectfully Submitted,



JEFFERY S. FRENSLEY #17358
211 Third Avenue North
P. O. Box 198288
Nashville, Tennessee 37219-8288
615-256-2111
Attorney for the Petitioner

FORM 4.

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

United States Court of Appeals
for the Sixth Circuit

RICHARD HAMBLEN]
]
v.] Case No. 07-426
UNITED STATES OF AMERICA]
]

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. §§ 1746; 18 U.S.C. §§ 1621.)

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: Richard A Hamblen Date: NOVEMBER 19, 2007

My issues on appeal are:

WHETHER THE SECOND AMENDMENT GUARANTEES MEMBERS OF A LEGITIMATE STATE AUTHORIZED MILITIA THE RIGHT TO KEEP AND BEAR ARMS SUPPLIED BY THEMSELVES OF THE KIND IN COMMON USE BY THE MILITARY AT THE TIME.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$0.00		$0.00	
Self-employment	$0.00		$0.00	
Income from real property (such as rental income)	$0.00		$0.00	
Interest and dividends	$0.00		$0.00	
Gifts	$150.00		$0.00	
Alimony	$0.00		$0.00	
Child support	$0.00		$0.00	
Retirement (such as social security, pensions, annuities, insurance)	$0.00		$0.00	
Disability (such as social security, insurance payments)	$0.00		$0.00	
Unemployment payments	$0.00		$0.00	
Public-assistance (such as welfare)	$0.00		$0.00	
Other (specify):	$0.00		$0.00	
Total monthly income:	$150.00	$0.00	$0.00	$0.00

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Self-Contractors Mirror & Glass Co	510 Houston St Nashville, TN 37203	Sep 1987-present	
Custom Marble	Franklin, TN (defunct)	1987	$1,200.00
Sisters Of Mercy of Nashville	Nashville, TN	1986-87	$3,000.00

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay

4. How much cash do you and your spouse have? $ 100.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
Pinnacle	Personal Checking- RH	$0.00	
Pinnacle	Business Checking-RH	$1,500.00	

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor Vehicle #1 (Value)
0.00	0.00	Make & year:
		Model:
		Registration #:

Motor Vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
No one		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
No one		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	$0.00	
Are real estate taxes included? ☐Yes ☐No Is property insurance included? ☐Yes ☐No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$0.00	
Home maintenance (repairs and upkeep)	$0.00	
Food	$300.00	
Clothing	$0.00	
Laundry and dry-cleaning	$0.00	
Medical and dental expenses	$23.00	
Transportation (not including motor vehicle expenses)	$0.00	
Recreation, entertainment, newspapers, magazines, etc.	$0.00	
Insurance (not deduced from wages or included in mortgage payments) Homeowner's or renter's	$0.00	
Life	$0.00	
Health	$725.00	
Motor vehicle	$300.00	
Other:	$0.00	
Taxes (not deducted from wages or included in mortgage payments) specify: business and franchise taxes	$35.00	
Installment payments	$0.00	
Motor Vehicle	$0.00	
Credit card (name):	$0.00	
Department store (name):	$0.00	
Other: Hardship payment on defaulted bus. debt-Chase	$100.00	
Alimony, maintenance, and support paid to others	$0.00	
Regular expenses for operation of business, profession, or farm (attach detail)	$1,445.00	
Other (specify):	$0.00	
Total monthly expenses:	$2,928.00	$0.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid-or will you be paying-an attorney any money for services in connection with this case, including the completion of this form?

☑ Yes ☐ No If yes, how much? $ 45,000.00

If yes, state the attorney's name, address, and telephone number:

Jeffrey S. Frensley
P.O. Box 198288
Nashville, TN 37219
(615) 256-2111

11. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No If yes, how much? $

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

My estranged wife has stolen all my money and property and is suing me for divorce.

13. State the address of your legal residence.

946 Evans Road
Nashville, TN 37204
(my brother's house)

Your daytime phone number: (615) 615-244-1515

Your age: 52 Your years of schooling: 16

Your social-security number: 412 96 9902

No. 07-426

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2007

Supreme Court, U.S.
FILED
NOV 21 2007
OFFICE OF THE CLERK

RICHARD HAMBLEN
Petitioner,

vs.

UNITED STATES OF AMERICA
Respondent

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Comes the Petitioner, Richard Hamblen, through undersigned counsel, and hereby files this Petition pursuant to Rule 44 of the Rules of the Supreme Court. This Petition is restricted to the grounds set forth in Rule 44 and is presented in good faith and not for delay. In support of this Petition Mr. Hamblen would state that the court should consider his Petition for Writ of Certiorari, which was denied by this Court on October 29, 2007 in light of intervening circumstances of a substantial effect.

Mr. Hamblen was convicted by a jury in the Middle District of Tennessee for unlawful possession of firearms. The District Court refused to allow Mr. Hamblen to advance his argument that he had an individual right to bear arms as result of his membership in the Tennessee State Guard, a voluntary, statutorily created and authorized militia for the State of Tennessee. Mr. Hamblen was sentenced to a term of imprisonment of fifteen (15) months. The grounds for hearing this case are set forth in

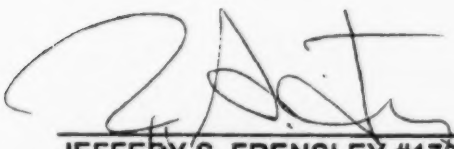
his Petition for Writ of Certiorari previously filed which he adopts and incorporates by reference in this Petition for Rehearing.

On November 20, 2007, this Court granted the Petition for Writ of Certiorari in the case of District of Columbia v. Heller, 07-290. Heller is a civil case brought in the District of Columbia challenging the District's handgun ban. At issue in that case is whether the Second Amendment creates an individual right to bear arms. This is the precise issue raised by Mr. Hamblen in his appeal. However, Mr. Hamblen's case is different that that case for several important and critical reasons. Mr. Hamblen submits the Court should reconsider his Petition and grant the Writ.

First, Mr. Hamblen's case is a criminal case and as a result of being deprived of the opportunity to present his defense that the Second Amendment protected his right to possess the firearms for which he was charged and ultimately convicted of possessing, he has suffered a much more serious sanction that any of the parties in the other case. Second, Mr. Hamblen's case raises a critical element not presented in Heller insofar as Mr. Hamblen was a member of a legitimate statutorily created and authorized militia. There is no alleged militia membership in the other case by any of the parties involved. Finally, by granting Mr. Hamblen's petition the issue of retroactive application of any ruling on this important issue can be resolved without the need for post-conviction litigation.

WHEREFORE, for all the foregoing reasons, the Petitioner would respectfully request that the Court reconsider its order denying his Petition for Writ of Certiorari pursuant to Rule 44 of the Supreme Court Rules in light of the intervening circumstance of substantial or controlling effect.

Respectfully Submitted,



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No. 07-426

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2007

RICHARD HAMBLEN
Petitioner,

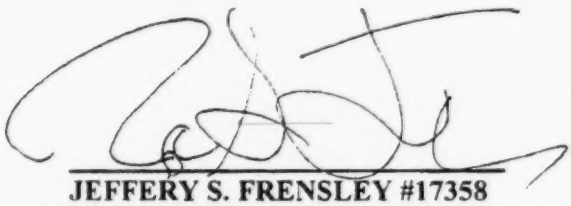
vs.

UNITED STATES OF AMERICA
Respondent

CERTIFICATION OF COUNSEL

Comes Jeffery S. Frensley, counsel for the Petitioner, Richard Hamblen, pursuant to Rule 44 (2) of the Rules of the Supreme Court and hereby certifies that Mr. Hamblen's Petition for Rehearing under Rule 44 filed in this matter is limited to intervening circumstances of a substantial or controlling effect as specified in Paragraph 2 of Rule 44. Counsel further certifies that the Petition is presented in good faith and not for delay.

Respectfully Submitted,



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